U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-T-

DATE: SEPT. 7, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major,

internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner states that he "is a Brazilian-born painter currently living in South Florida" and that he "developed his unique style creating hard-edged compositions, flatly painted on a variety of backgrounds."[1] As he has not established that he has received a major, internationally recognized award, the Petitioner must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, he asserts that he meets the following criteria: published material at 8 C.F.R. § 204.5(h)(3)(iii), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and display of his work at 8 C.F.R. § 204.5(h)(3)(vii). Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

As evidence under this criterion, the Petitioner submits a two-sentence profile of himself in the "artistic directory" section of an art and culture magazine, dated ' 2015." This brief profile appearing in the magazine's artistic directory does not constitute published material about the Petitioner for purposes of this criterion. While the Petitioner asserts that the material was authored by the profile appears to have been written by the Petitioner

[1] The Petitioner's Form G-325A, Biographic Information, and two H-1B approval notices submitted with the petition indicate that he has been employed by as a business manager since October 2012.

and sent to [redacted] for inclusion in the directory rather than authored by her.[2] Without corroborating evidence from the magazine or [redacted] the Petitioner's assertion that she authored the material is not sufficient to demonstrate eligibility. In addition, the Petitioner offers information about [redacted] from the advertising section of the magazine's website. This information includes a description of [redacted] reader profile, distribution, print advertising, and digital advertising. For example, the digital advertising section states that the magazine's website attracts "54,000 page views per month." The evidence, however, is insufficient to show that [redacted] monthly page views elevate the magazine to a form of major media or a major trade publication relative to other art publications.

The record also contains a [redacted] 2016 article about the Petitioner, entitled '[redacted] [the Petitioner] [redacted] from the website of [redacted] a visual arts blog. Additionally, he provides [redacted] media kit stating that its online portal is '[redacted] with a reach of "375K+ monthly" visitors and a social media following of "75K+"monthly. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). Regardless, the Petitioner has not shown that this local blog's readership numbers render the portal a form of major media or a major trade publication. Furthermore, this criterion requires that the evidence "shall include" the author of the material, but the article's byline lists '[redacted]' rather than the author's name. In the appeal brief, the Petitioner claims that the article was authored by [redacted] but did not provide corroborating evidence from [redacted] or [redacted] to support this assertion.

The Petitioner submits a [redacted] 2016 article about him in [redacted] entitled '[redacted] [redacted] In addition, he provides information from [redacted] media kit indicating that the "newspaper is a weekly publication in the Portuguese language for Brazilians living in South Florida and [redacted] areas." The media kit further states that [redacted] website receives "an average of 300,000 visitors per month" and is "the most visited website for the Brazilian community in the U.S." The Petitioner, however, did not provide comparative statistics or other evidence to show that [redacted] constitutes major media. Furthermore, , while the appeal brief lists [redacted] as the author of the article, the Petitioner did not provide evidence to support this claim and the article itself identifies [redacted] as the author.

The record includes a [redacted] 2016 blog about the Petitioner posted on the website of [redacted] an online arts supply store, but the record does not include evidence that this website is a major trade publication or form of major media. In addition, the Petitioner asserts the article was authored by

[2] The magazine's website states: "The [redacted] Artists' Directory is a global network of artists engaging with the professional art world. . . . For more information, please send your portfolio to [redacted] . . ." Additionally, the terms and conditions of the artists' directory state that "[c]opy/text may be edited to fit within the allocated space" and that "[m]inor proofreading and/or copy revisions may be made to the copy at the discretion of the [redacted] editorial team." *See* http://www [redacted] accessed on August 14, 2017, copy incorporated into the record of proceedings.

but offers no supporting evidence of his authorship. The Petitioner also offers a 2015 article about the Petitioner posted at a website "serving the South Florida Community of Artists and Art Patrons." The record, however, does not show that the aforementioned website is a form of major media.

The Petitioner submits his artist profile posting from but the record does not demonstrate that this website is a major trade publication or form of major media. While he asserts that his profile was authored by and dated 2016, he offers no evidentiary support for his claim. The record also contains a four-sentence profile of the Petitioner posted at dated 2015, but the author was not identified and the evidence does not show that this website is a major trade publication or form of major media.

In addition, the Petitioner offers articles about himself posted at 2014) and in the annual edition of *2015*, ' The record, however, does not establish that and *2015* are major trade publications or major media. The Petitioner also provides a blog post about him appearing on the websites of and but the author was not identified and aforementioned websites do not qualify as major trade publications or major media. Furthermore, while the Petitioner asserts that the aforementioned blog post was dated 2015, he offers no evidence to support his claim.

The record also contains a USB drive and a compact disc which the Petitioner contends show his "paintings in several galleries, interviews, and [him] producing some art works." The evidence, however, does not include a full transcript of the video footage to demonstrate that the material was about the Petitioner. Furthermore, the record does not include the title, date, and author of the video coverage. Lastly, the Petitioner has not offered supporting documentation establishing that the video coverage was broadcast by major media. As the Petitioner has not offered material about himself in professional or major trade publications or other major media, he has not established that he meets this regulatory criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner offered various letters of support and photographs of his work as evidence for this regulatory criterion. The Director stated that the record included "evidence that and are using [the Petitioner's] original artistic designs as templates for watch designs" and concluded, therefore, that he satisfied this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that he meets the plain language of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The record includes a letter from assistant curator at the in stating that he "initiated a project with the [store] in the

to present work from artists in the United States. further indicates that "[t]his project invites the artists to paint the making the watches unique and part of a new collection sold in the store." In addition, contends that the store director "was very impressed with [the Petitioner's] ability and originality." The Petitioner also provided photographs showing the store's retail displays with the Petitioner's artwork.

With respect to the Petitioner's project for he offers a December 2015 email response from the company thanking him for submitting "information on our Collaboration Form." The message continues: "It may take some time to build out your storefront on our website, but we promise it will be worth it. or will be in touch in the next few weeks with the next steps. Also, want to sell your designs on the new Sign up below to get started!" In addition, the Petitioner provides information from website stating:

> makes custom watches, hand-assembled in We partner with amazing artists, important causes, talented musicians, dope influencers and more to create custom gear that their fans love. We have a few styles, from a fun, lightweight and durable silicone style through a higher-end stainless steel and leather timepiece. See our best-sellers, design your own watch, or just browse designs from our thousand plus partners who use as their merchandise partner.

The record, however, does not include a letter from its store director, or discussing the number of watches sold based on the Petitioner's designs, the amount of sales revenue his artwork generated for their companies, or the impact of his designs in the custom watch industry. Without further documentary evidence, the Petitioner has not established that his specific designs for and constitute artistic contributions of major significance in his field.

With regard to the Petitioner's other art projects, a sculptor and art entrepreneur, states that he invited the Petitioner to participate with other artists in the program.[3] notes that his initiative aims "to present a concept of communication through the visual arts to the youth across the United States of America." He further indicates: "[The Petitioner's] intuitive and strong work ethic manifested by many hours of working on the details of my sculptures proved to me he is one of the best and most unique visual artists I have ever come across in my many years in the art business." While contends that the Petitioner "is making a considerable contribution to the U.S. culture and industry," he does not provide specific examples of how the Petitioner's artwork has risen to the level of contributions of major significance in the field.

pastor of in indicates that the Petitioner "was able to take an image of a mosaic portrait of and create a life size painting for our church that needless to say is breathtaking. . . . His talent is extraordinary as attested by several of his works that bring such beauty to our Church, Parish Center, and School." In order to

[3] wrote two letters of recommendation, both of which are discussed in our analysis.

meet this regulatory criterion, it is not enough to be a talented painter and to have others attest to that talent. Rather, an individual must have made significant contributions to his field. does not explain how the Petitioner's original works for the church have widely affected the visual arts field or have otherwise been commensurate with original contributions of major significance in the field.

director and founder of the asserts that she has "had the pleasure of working with some of the most accomplished and talented artists in the market." In addition, she states: "[The Petitioner] is not only a stellar craftsman with original ideas, artistic knowledge and sublime execution but he has the magic and spirit that I have only witnessed in a handful of extraordinary and exemplary artists." however, does not provide specific examples of how the Petitioner's work has influenced others in the field or otherwise constitutes original contributions of major significance in the field of contemporary art.

a public art curator and executive director of in president of the in and owner of the in each indicate that the Petitioner possesses extraordinary ability as a visual artist, but do not identify any specific contributions he has made that were of major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, *1, *5 (S.D.N.Y. Apr. 18, 1997).

Many of the Petitioner's references comment on the display of his artwork. For example, notes that one of the Petitioner's paintings was exhibited "as public art on a bus shelter during our public art exhibition in In addition, states that "the exhibition of [the Petitioner's] paintings in our gallery are drawing the attention of thousands of people and the recognition of the market and peers." Furthermore, professor of arts at indicates that she "invited [the Petitioner] to be part of the project an art show in The Petitioner's participation in various exhibitions and art shows is more relevant to the display category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion that he has already satisfied. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the display criterion to satisfy this one. Regardless, the aforementioned references statements are not sufficient to demonstrate that the Petitioner's work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to original contributions of major significance in the field.

The letters considered above primarily contain discussions of the Petitioner's art projects and attestations of his talent and status in the field without providing specific examples of how his

[4] In response to the Director's request for evidence, the Petitioner provided photographs of his painting on display in the bus shelter.

artwork rises to a level consistent with contributions of major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Furthermore, uncorroborated statements from the Petitioner's references are insufficient to demonstrate his eligibility. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought). Without sufficient evidence demonstrating that his work constitutes artistic contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner provided documentation indicating that his paintings have been displayed at artistic exhibitions such as ' 2016" at the and ' 2016" at the Accordingly, the record supports the Director's finding that the Petitioner meets this regulatory criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement or documentation meeting at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.[5] Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-T-*, ID# 553248 (AAO Sept. 7, 2017)

[5] In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).